

BOARD OF APPEALS CASE NO. 5158

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BEFORE THE

APPLICANT: Michael Horner

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ZONING HEARING EXAMINER

**REQUEST: Variance to disturb the non-tidal
wetlands in the B3 District; 725 Pulaski Highway,
Joppa**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 8/22/01 & 8/29/01

HEARING DATE: February 4, 2002

Record: 8/24/01 & 8/31/01

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Michael Horner, is requesting a variance, pursuant to Section 267-41D(5)(e) and (6), of the Harford County Code, to disturb non-tidal wetlands in a B3 District.

The subject parcel is located at 725 Pulaski Highway, Joppa, Maryland 21085 and is more particularly identified on Tax Map 65, Grid 3B, Parcel 83, Lot 89. The parcel consists of 1.38± acres, is zoned B3 General Business and is within the First Election District.

SUMMARY OF FACTS

Two witnesses appeared and testified before the Hearing Examiner; Stanley Kollar, an expert environmental engineer on behalf of the Applicant, and Mr. Anthony McClune, on behalf of the Department of Planning and Zoning. The facts are undisputed and are summarized as follows:

The property was originally subject to Board of Appeals Case 4004 wherein the Board allowed a disturbance of the Natural Resource District. Disturbance was limited by Condition 1 imposed by the Hearing Examiner and adopted by the Board, that disturbance be limited to the area shown on the Applicant's site plan (Attachment 11 to Staff Report in Case 4004). Unfortunately, during construction of the commercial building an additional 2,125 square feet of NRD area along the south portion of the parcel was disturbed and is the subject of this request. The area of disturbance has been filled and gravel put down and compacted. The slope areas have been planted with grass and are maintained. There is no evidence of erosion in this area.

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The parcel was uniquely configured containing slopes, NRD area, areas of severe erosion and a Harford County pumping station. According to the Applicant's expert witness, the property was so constrained by these features it was an engineering challenge to be able to use it at all for a commercial use. Admittedly, the additional area of disturbance was inadvertent and unfortunate but neither of the witnesses felt that any adverse impact resulted from the disturbance. The property is significantly improved over its former condition. Storm water management has been added and a culvert was constructed to address severe erosion problems that existed on this parcel in the past. In the opinion of both witnesses, removal of the existing gravel and fill in this disturbed area would likely result in more harm to the Natural Resource District than simply leaving it alone.

Both witnesses agreed that the property is now stabilized, erosion is being controlled and that the disturbance to the NRD that occurred was inadvertent. The Department of Planning and Zoning has recommended approval of the request. There were no persons who appeared in opposition to the subject request.

CONCLUSION:

The Applicant, Michael Horner, is requesting a variance, pursuant to Section 267-41D(5)(e) and (6) of the Harford County Code, to disturb non-tidal wetlands in a B3 District.

Harford County Code Section 267-41D(5)(e) and (6) provide as follows:

D. Natural Resources District.

- (5) Conservation requirements.** The following conservation measures are required within this district.
 - (e) Nontidal wetlands shall not be disturbed by development.** A buffer of at least seventy-five (75) feet shall be maintained in areas adjacent to wetlands.
- (6) Variances.** The Board may grant a variance to Subsection D(3), (4) or (5) of the Natural Resources District regulations upon a finding by the Board that the proposed development will not adversely affect the Natural Resources District. Prior to rendering approval, the Board shall request advisory comments from the Zoning Administrator, the Soil Conservation Service and the Department of Natural Resources.

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The Hearing Examiner finds nothing in the record or testimony that would lead to the conclusion that a grant of the subject request would result in adverse impact to the Natural Resource District. In fact, it was the unanimous opinion of the witnesses that restoration of this area would probably result in far greater environmental consequence than simply leaving the area “as is”. Based on all of the facts presented the Hearing Examiner recommends approval of the subject request subject to the following conditions:

1. A wetland mitigation/restoration plan for 2,125 square feet of non-tidal wetland loss is submitted for review and approval by the Department of Planning and Zoning.
2. Wetland mitigation/restoration shall be completed in accordance with the approved plan of mitigation.
3. A bond or letter of credit in the amount of \$5000.00 is provided to Harford County Government to insure survival of the proposed mitigation. The surety shall be held by Harford County for a period of five (5) years after the successful completion of the proposed mitigation, at which time the surety or bond will be released back to the Applicant.
4. The area of disturbance on Applicant’s property which is the subject of this request shall not be used for storage or parking and any materials currently located in that area shall be removed within 10 days of this decision becoming final.

Date MARCH 6, 2002

William F. Casey
Zoning Hearing Examiner